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Third Circuit Enforces Post-Acceleration Make-Whole Premium

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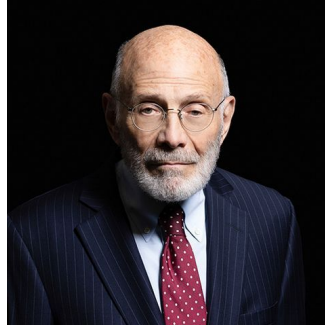
The U.S. Court of Appeals for the Third Circuit held on Nov. 17, 2016 in *In re Energy Future Holdings Corp.* that a debtor's refinancing of its first and second lien notes during its Chapter 11 case triggered the obligation to satisfy the "make-whole" payments contemplated to be more than \$431 million by at least one of the indentures. Reversing the lower courts, the Third Circuit held that the debtors had effectuated optional redemptions entitling the lenders to receive their contractual make-whole payment despite the automatic acceleration of the notes upon the bankruptcy filing. *Id.* at *13-17. In this article, partners Adam Harris and Lawrence Gelber, of counsel Michael Cook and former Schulte lawyer Lucy Kweskin discuss the Third Circuit's warning to borrowers regarding obligations to pay make-whole premiums.

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